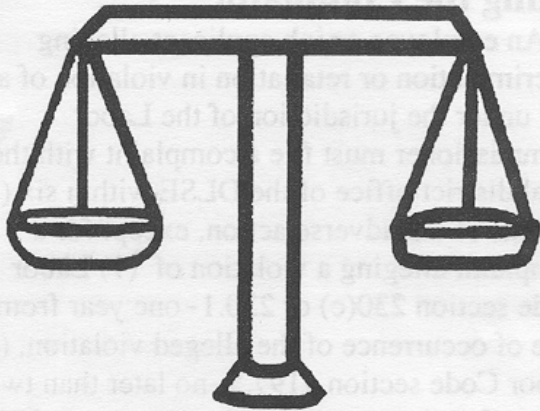


DISCRIMINATION

COMPLAINTS



A Summary of Procedures

State Labor Commissioner

Division of Labor Standards Enforcement

A Summary of 'the Procedures

Employees and applicants for employment who suffer discrimination or retaliation because they engage in a protected activity in violation of any law under the jurisdiction of the Labor Commissioner may file a complaint with the Division of Labor Standards Enforcement (DLSE). The Labor Commissioner has instituted a procedure pursuant to Labor Code section 98.7 for investigating these discrimination and retaliation complaints.

Filing the Complaint

An employee or job applicant alleging discrimination or retaliation in violation of any law under the jurisdiction of the Labor Commissioner must file a complaint with the local district office of the DLSE within six (6) months of the adverse action, except for a complaint alleging a violation of (1) Labor Code section 230(c) or 230.1 -one year from the date of occurrence of the alleged violation, (2) Labor Code section 197.5 -no later than two years after the cause of action occurs, and (3) Health and Safety Code section 1596.881 –not later than 90 days after action as to which complaint is made.

At the time of the filing of the complaint, the employee or job applicant will be interviewed to obtain information necessary to conduct an investigation.

An employee or job applicant who files a complaint alleging discrimination or retaliation has the right to file a separate private court action against the employer and/or to bring an action against the employer under the statute if, after investigation, the Labor Commissioner dismisses the complaint.

Any employee or job applicant alleging discrimination or retaliation based upon the exercise of OSHA-protected rights has the right

to file a concurrent complaint with Federal OSHA within 30 days after the occurrence of the adverse action. The employee, job applicant, and employer have the right to file a Complaint Against State Program Administration (CASPA) with Federal OSHA in the event they are not satisfied with the conduct of the investigation by the Labor Commissioner.

The Investigation

After filing the complaint, the employee or job applicant will be contacted by a Discrimination Complaint Investigator (DCI) who will conduct an investigation. The DCI will contact the employer and any witnesses who may have information regarding the alleged discrimination or retaliation. The DCI may also request that the parties meet to explore the possibility of settlement. The cooperation of both parties is essential to ensure that all available facts are uncovered in the course of the investigation.

Once the investigation is complete, if no settlement is reached, the DCI will prepare a written Summary of Facts and Conclusions and forward those documents to the Labor Commissioner.

The Decision

The Labor Commissioner will review the Summary of Facts and Conclusions and render a decision based thereon. If the Labor Commissioner finds that the law has been violated, the employer will be given ten (10) days to comply with the Decision to remedy the situation or face a court action to enforce the Decision. In the event it becomes necessary to enforce a Decision of the Labor Commissioner, the attorneys for the Labor Commissioner will prosecute the action.

Either party may seek review of the Labor Commissioner's Decision by filing an appeal

with the Director of the Department of Industrial Relations within ten (10) days of the date of service. The appeal shall set forth specifically and in full detail, the grounds upon which the appealing party considers the Decision to be unjust or unlawful, and every issue to be considered by the Director.

The Hearing

Instead of adopting the DCI's Conclusions, the Labor Commissioner may decide that a hearing is necessary to fully establish the facts surrounding the complaint. At least five (5) days before the scheduled hearing, the employer and employee or job applicant will each receive a copy of the Summary of Facts prepared by the DCI setting forth the facts he or she found during the course of the investigation.

The hearing is informal in nature, and is an investigative hearing for the purpose of further obtaining the facts relevant to the case. Either side may bring an attorney, union representative, or other person of their choice to represent them at the hearing.

A Hearing Officer will conduct the hearing. The DCI may appear at the hearing, introduce the Summary of Facts, any other evidence uncovered through the investigation, and answer questions regarding the investigation.

The Labor Commissioner, employer, employee, and job applicant can each subpoena witnesses and documents to the hearing. The parties should contact the DCI who will issue all subpoenas that are reasonably necessary. The DCI may refuse to issue unnecessary subpoenas. Any party who insists on subpoenaing witnesses or documents that the DCI believes are unnecessary should contact the Senior Deputy of the Discrimination Complaint Investigation Unit. When the Labor Commissioner issues a subpoena requested by a party, that party is

required to pay witness fees. If such fees are not paid, the witness(es) will not necessarily have to appear.

Within seven (7) working days after the hearing, the Hearing Officer will file the Findings of Facts and Conclusions with the Labor Commissioner.

Contact DLSE

If you have any questions regarding the procedures that will be used to investigate a complaint of discrimination or retaliation, please contact the nearest DLSE District Office. Consult the white pages of your telephone directory for the nearest DLSE District Office under: CALIFORNIA, State of, Industrial Relations, Labor Standards Enforcement, or visit the DLSE Website at: <http://www.dir.ca.gov/DLSE/DistrictOffices.htm>